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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/524,666	03/13/2000	John G. Aceti	SMI-13459pA	6745
21005	7590	03/09/2006	EXAMINER	
HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133			DABNEY, PHYLESHA LARVINIA	
			ART UNIT	PAPER NUMBER
			2646	

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

### **DETAILED ACTION**

This action is in response to the reply to restriction/election requirement received 2/4/06.

A phone call was placed on 23 February 2006 to advise the Attorney that a supspecies needed to be elected. A timely response was not received to this request; therefore, a supplement restriction is listed below.

#### ***Election/Restrictions***

This application contains claims directed to the following patentably distinct species of the claimed invention:

**Species I:** An embodiment of a modular hearing aid having a replaceable earmold depicted in Figures 1-8.

**Subspecies A:** The hearing aid having a battery integral with all earmold depicted in Figure 2.

**Subspecies B:** The hearing aid having an earmold integral with a shell housing a battery and receiver depicted in Figures 3A-5.

**Subspecies C:** The hearing aid having a receiver incorporated with an earmold tip depicted in Figure 6.

**Subspecies D:** The hearing aid having a receiver incorporated with an earmold sleeve depicted in Figure 7.

**Subspecies E:** The hearing aid having the replaceable earmold incorporating a portion of the shell depicted in Figure 8.

**Species II:** An alternate embodiment of the hearing aid, where the earmold allows the replacement of an integral shell depicted in Figures 9-11.

**Subspecies F:** The hearing aid having the replacement of an integral shell and electronics module depicted in Figure 9.

**Subspecies G:** The hearing aid having the replacement of an integral shell, electronics and receiver module depicted in Figure 10.

**Subspecies H:** The hearing aid has a base unit, a replaceable shell module and a replaceable earmold integrated with a battery depicted in Figure 11.

**Subspecies I:** The hearing aid has a base unit, a replaceable shell module and a replaceable earmold integrated with an electronics and receiver module in the spell as depicted by Figure 12.

**Subspecies J:** The hearing aid has a base unit, a replaceable shell module and a replaceable earmold integrated with a microphojne and electronic module in the shell as depicted by Figure 13.

**Species III:** An embodiment of a flexible mushroom earmold tip for a hearing aid depicted in Figures 14-20.

**Species IV:** An embodiment of a compliant tip having fingers for a hearing aid depicted in Figures 21-24.

Applicant is required under 35 U.S.C. 121 to elect a single supspecies disclosed within a single species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

### ***Conclusion***

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha L. Dabney whose telephone number is 571-272-7494. The examiner can normally be reached on Mondays, Tuesdays, Wednesdays, Fridays 8:30-4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 2, 2006

PLD



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SUPERVISORY PATENT EXAMINER